THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.27202 OF 2005

ORDER: (Per M.Venkateswara Reddy,J)

In this writ petition, the petitioner is questioning the order, dated 28.10.2005, of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal") made in O.A.No.239 of 1998 on its file, wherein the petitioner herein challenged the order cancelling his appointment to the Selection Grade post of L.D.C and was unsuccessful. He also challenged the consequential proceedings issued by the respondents downgrading the petitioner's pay and ordering recovery of the excess amounts paid to him, but in vain.

The petitioner was appointed as L.D.C. in NSC Circle, Miryalaguda on 15.06.1965. One Anwarullah was appointed as L.D.C. on 19.04.1966. Both of them joined Godavari Barrage Designs Circle, Hyderabad. The petitioner was promoted in the year 1982. Thereafter, Anwarullah was appointed to Selection Grade post of L.D.C. and promoted as U.D.C. As the petitioner was senior to Anwarullah, his pay was fixed in the Selection Grade post of L.D.C. on par with Anwarullah as per G.O.Ms.No.190, dated 10.06.1983 on promoting him notionally. Subsequently, by proceedings dated 22.11.1997, the proceedings issued in G.O.Ms.No.190 were cancelled. Thereafter, by proceedings dated 22.11.1997 the pay was downgraded and the excess amount paid to him from 01.04.1989 till the date of the proceedings was ordered to be recovered. Subsequently, by another proceedings dated 15.01.1998 excess amount paid to the petitioner from 01.04.1989 to 23.05.1997 and from 24.05.1997 to 31.12.1997 were also ordered to be recovered. Challenging the same, he filed O.A.No.239 of 1998 on the file of the Tribunal and obtained stay of recovery. Ultimately, the O.A. was dismissed on 21.10.2003.

The petitioner carried the matter to this Court in Writ Petition No.32 of 2004 and the same was allowed together with C.C.No.1679 of 2004 on 25.03.2005. This court remitted the matter back to the Tribunal. This Court felt that keeping in view the principle that a senior should not be allowed to get less than the junior's pay the petitioner was granted selection grade in pursuance of Rule 46 (a) of the A.P.State and Subordinate Rules and the Tribunal failed to address itself to that question, but took into account only the principle of equal pay for equal work and disposed of the O.A. and therefore remitted back the matter to the Tribunal for fresh consideration in accordance with rules. Thereafter, the Tribunal heard the matter once again and following the judgment of the Supreme Court in ***STATE OF ANDHRA PRADESH AND OTHERS v. G.SREENIVASA RAO etc***. in Civil Appeal No.307-316 of 1998, dismissed the O.A. The Tribunal held as under:

> "5. From the facts of the case, it appears clear that the Applicant and the individual with reference to whose pay the Applicant's pay has been stepped up belongs to different units. The selection grade LDC post to which the Applicant was promoted was not available in the Unit where he was working. The said post was sanctioned only to the earlier Unit where he was working namely N.S.Dam. The Applicant was working at Godavari Barrage Designs Circle, Hyderabad since 22.6.1972. There is also no arbitrariness in the action of the Respondents, since it is quite apparent. The Applicant does not qualify the conditions laid down in G.O.Ms.No.190, dated 10.6.1983. The eligibility for appointment to the post of LDC (special grade) should be with reference to G.O.Ms.No.190, Finance and Planning Department, dated 10.6.1983 and unless the Applicant satisfies conditions laid down in the said G.O.190, he would not have been eligible and considered for special grade post. The fact of the matter is that though the Applicant and Sri Anwarullah were working in Godavari Barrage Designs Circle, Hyderabad, they were both drawn to the said Circle from two different Units. This is an admitted fact, as can be seen from the representation submitted by the Applicant himself to the Engineer-in-Chief, in response to the Memo issued to him prior to the issue of impugned proceedings. That being the case, the Applicant cannot compare himself with a person belonging to another Unit for the purpose of claiming benefit of 'principle of equal pay for equal work'. Therefore, both, in view of facts of the case as well as the judgment of Hon'ble Supreme Court, cited above, this

O.A., has to fail, and it is accordingly dismissed."

The contention of the learned counsel for the petitioner is that the recovery ordered is not sustainable inasmuch as the petitioner received the higher scale due to no fault of his and for this purpose he relied upon a ruling of the Apex Court in ***SHYAM BABU VERMA AND OTHERS v. UNION OF INDIA AND OTHERS***, wherein it is held :

> "11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

In the case on hand, notional promotion was given as per the proceedings dated 10.06.1983 in the Selection Grade post and cancellation proceedings are dated 22.11.1997. It is more than a decade after the respondents woke up from deep slumber, realized the mistake and passed cancellation orders. Therefore, we are of the opinion that it would be just, following the Apex Court's decision (1 supra), to direct the respondents not to recover or adjust any excess amount paid to the petitioner due to their fault.

In the result, the writ petition is allowed in part directing the respondents not to take any steps to recover or adjust any excess amount paid to the petitioner. The order of the Tribunal stands modified to this extent while confirming it in other respects.

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J.CHELAMESWAR, J.

Date: 26.04.2006.

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M.VENKATESWARA REDDY, J.

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After pronouncement of the order, the learned counsel for the petitioner submits that the authorities concerned, have already recovered some amounts, pursuant to the impugned orders, from the retrial benefits of the petitioner.

In the circumstances, we direct that the amounts so recovered, if any, shall be returned to the petitioner forthwith.

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J.CHELAMESWAR, J.

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M.VENKATESWARA REDDY, J.

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26th April, 2006.